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Of Counsel
Einbinder & Dunn, LLP

January 18, 2022

Hon. John G. Koetl
United States District Court Judge
U. S. District Court
500 Pearl Street
New York, NY 10007 - 1312

Re: Tapp Market Influencers LLC, et al. v. Espire Ads LLC,
et al.
Civil Action No. 21-cv-11068 (JGK)

Dear Judge Koetl:

We represent plaintiffs in this action (the "Tapp Action") and this letter is in response to defendants' request for a conference prior to moving to dismiss based upon the ground that the action in Espire Ads, et. al. v. Tapp Market Influencers, Inc., 21-cv-10623-JGK (the "Espire Action"), is a prior action pending. While we have no objection to the conference, we do not believe that the motion would succeed.

First, the plaintiffs in the Tapp Action are different than the defendants in the Espire action. Most notably, Tapp Market Influencer Corp. is the defendant in the Espire Action. That entity had a brief existence before Tapp Market Influencers LLC was formed and the latter is plaintiff in this action.

Second, the defendants in the Tapp Action are different in that Nathaniel Co, CPA Viral LLC, and Charles Punay are defendants in this action but are not included in the Espire Action.

Last, and not least, is question of whether the Espire Action should be considered a prior action pending at all. Although the Espire complaint had been filed with the Court on December 14th, plaintiffs did nothing to proceed. No cover sheet or request for a summons had been filed by plaintiffs by December 27th at which time it came to the attention of my clients that there were texts being forwarded to persons in the social marketing community referencing the complaint, asserting that TAPP would be put out of business and could not be trusted. An example is attached hereto.

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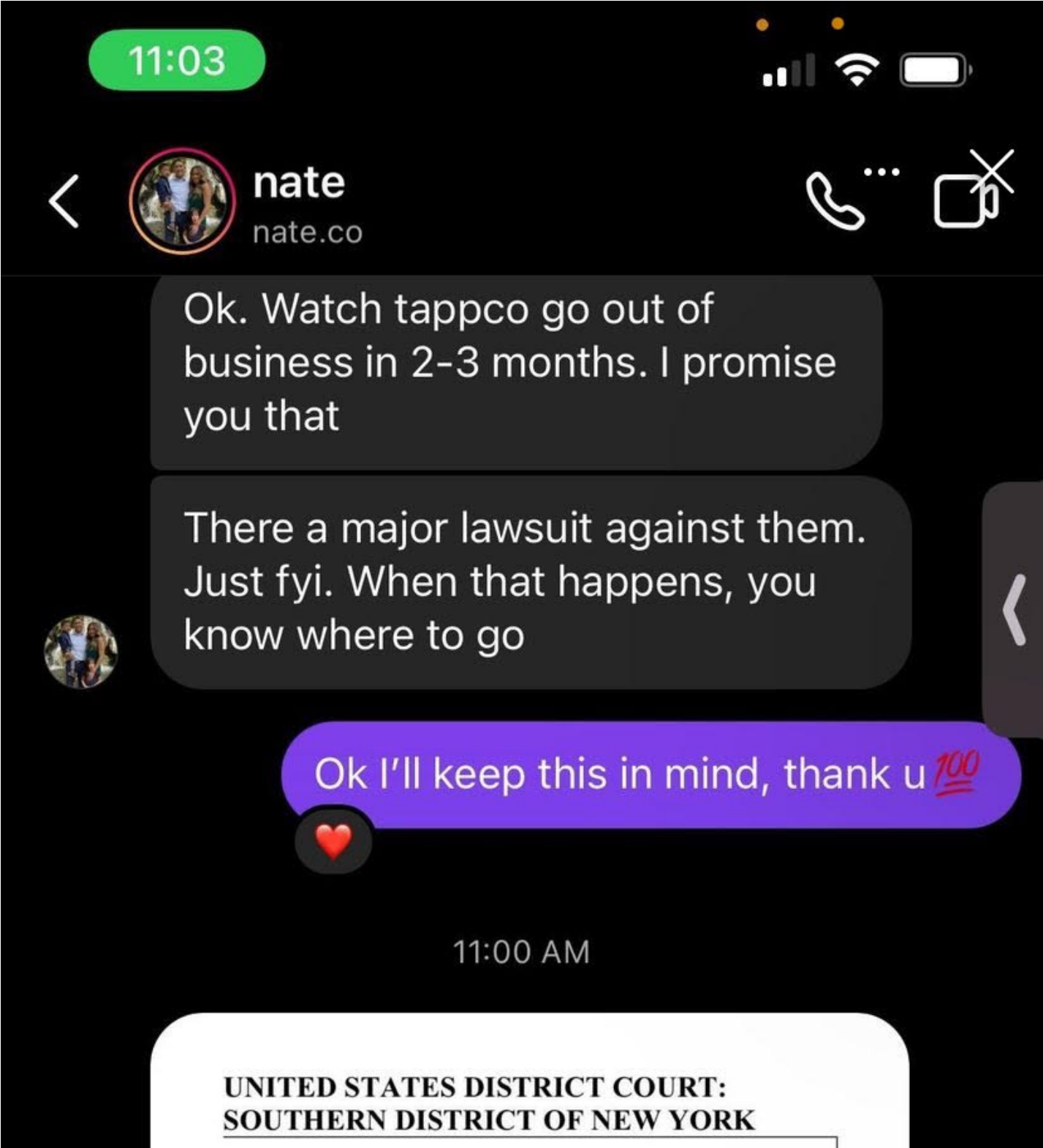
As the case had not been initiated or served, the only way to go on record with TAPP's position and to counter the texts was for TAPP to file its own complaint. Accordingly, where it would appear that the plaintiffs were proceeding in bad faith and had not initiated process, the second complaint should not be dismissed and in fact should take priority.

Respectfully,

Richard L. Herzfeld

RICHARD L. HERZFELD

cc via ECF: Zachary Meyer, Esq.



Civil
ECF

V.

Defendants.



Tap and hold to react



Reply...